

(1977) 07 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3585 of 1971

Sarvadaman Rai

APPELLANT

Vs

Dalganjan Rai and Others

RESPONDENT

Date of Decision : 15-07-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1977 All 417 : (1977) RD 263

Hon'ble Judges : Amitav Banerji, J

Bench : Single Bench

Advocate : S.K. Varma, for the Appellant; Standing Counsel and G.P. Mathur, for the Respondent

Final Decision : Allowed

Judgement

Amitav Banerji, J.—The petitioner has challenged in this writ petition an order passed by the Deputy Director of Consolidation, Lucknow (Camp at Ghazipur), dated 25th January 1975 on the ground that although he was a necessary party, he had neither been impleaded nor heard before the alteration in the chak was made. There is no dispute that the petitioner was not impleaded as a party in the revision filed by Joginder Rai and others. The point in issue is whether the interest of the petitioner was represented by his cousins and uncles. The contention on behalf of the petitioners was that they did not represent his interest, and since the petitioner was not afforded an opportunity of being heard before the alteration in the chaks were made there was a breach of the rules of natural justice and the petitioner's interest gravely prejudiced. The contention on behalf of the contesting respondents was that the petitioner was a joint chak holder along with respondents 1 to 5, who were parties in the revision and as such, no prejudice was caused to the petitioner.

2. A number of reported decisions were cited by either parties in this case, in support of their respective contentions. Mr. Justice Dwivedi in the case of Lautayan v. Deputy Director of Consolidation (1966 Rule D. 89) was considering

the case of three brothers, one of whom had no notice of the proceedings. He took the view that it was not improbable that the two brothers might have acted on their own. There being nothing on the record to show that one of these two brothers was a manager of the joint family, or that the three brothers constituted a joint family, he held that since the third brother was not given the notice of the proceedings the order of the Deputy Director of Consolidation was in clear violation of the principles of natural justice. Consequently, the writ petition was allowed, and the impugned order was quashed. In the case of *Kunj Behari v. Deputy Director of Consolidation* (1967 R. D. 38), Mr. Justice Laxmi Prasad held the proceedings u/s 48 of the Consolidation of Holdings Act to be judicial or quasi judicial proceedings, and where an order was passed to the prejudice of a party without affording an opportunity to such a party, it violated the principles of natural justice which justified the issue of certiorari. In the above case, three of the necessary parties were not served in the revision and had not put in Appearance although an order was passed against them. The writ petition was allowed, and the impugned order was quashed. In the case of *Kr. Sarjeet Singh v. Dy. Director of Consolidation* (1967 RD. 309), Mr. Justice R. S. Pathak (as he then was) held that the impleadment of necessary parties was imperative and where there was a failure to implead the necessary parties, the Deputy Director of Consolidation was justified in dismissing the revision on that ground. It was a case which involved a question as to the rights of co-tenure-holders. In the above case, only one of the petitioners was impleaded as opposite party in the revision. This decision was affirmed by a Division Bench of this Court reported in (1967 R. D. 136 *Kr. Sarjeet Singh v. Dy. Director of Consolidation*). In the case of *Sita Ram Singh v. State of UP* (1970 All WR (HC) 717), Mr. Justice S. N. Singh held that the notice served on one of the co-tenure-holders does not amount to a service on all of them. He held that the notice should be served on all the co-tenure-holders concerned. He relied on the decision of Mr. Justice Dwivedi and two other decisions of this Court, one in *Sheo Prasad v. Chhotey Lal* (1966 R. D. 375) and the other in *Chandrika v. Deputy Director of Consolidation* (1967 R. D. 125). It was contended before Mr. Justice S. N. Singh that the petitioner was not made a party in the proceedings before the Deputy Director of Consolidation, and it was held in the above case that although the petitioner was not made a party, he had been heard before the impugned order was passed and consequently principles of natural justice had not been violated. In the case of *Rai Bahadur Singh v. Drig Raj Singh* (1968 R. D. 199) a Division Bench of this Court held that an order passed by a subordinate tribunal without affording chance of hearing is bad in law and it violated the principle of natural justice. It was further held that such an order could be quashed even though it had not resulted in prejudice to a particular party. This was also a case of allotment of chaks in which only one of the four petitioners was arrayed as opposite party in the revision.

3. As against the above decisions, learned counsel for the respondents cited a decision of Mr. Justice H. C. P. Tripathi in the case of *Syed Mohammed Revaz v. Dy. Director of Consolidation* (1971 R. D. 305). It was held in that case that the

Deputy Director of Consolidation had not acted illegally in exercise of its jurisdiction where one of the three brothers, who had been allotted a joint chak, had been heard before the Deputy Director of Consolidation. In this decision it was held that there was nothing to suggest that there was a conflict of interest between the brother, who had been impleaded and heard and the brothers, who had neither been impleaded nor "heard. It was held that the brother who had been heard represented the interest not only of himself but his two brothers. It was urged that the petitioner and respondents 1 to 5 were joint Chak holders and their interest being joint and common was adequately represented by the latter, and consequently no prejudice was caused to the petitioner even if he was not impleaded. It was further urged that the respondent No. 5, Ram Lachhaa Rai was the uncle of the petitioner and acted as his guardian while he was a minor and, therefore, his interest was represented by the respondent No. 5. The order of the Deputy Director of Consolidation was passed on 25th January 1971. It has been stated in paragraph 8 of the counter-affidavit of respondents 6 to 9 that the petitioner had attained majority about three years back. This affidavit was sworn on the 9th October, 1972. That would show that the petitioner had become major three years earlier i. e. prior the order passed by the Deputy Director of Consolidation i. e. in 1969. Therefore, the petitioner was major when the Deputy Director of Consolidation passed the impugned order. It is not established from any evidence on the record that the petitioner and the respondents Nos. 1 to 5 belonged to a joint family, or that respondent No. 5 was the Karta thereof. It is also not borne out from any material on the record that the petitioner had authorised Ram Lachhan Rai, respondent No. 5, or any other respondent to represent his case. It is a cardinal principle of law that every party who has an interest involved in the subject-matter of dispute, has to be impleaded as a party and/or heard before an order is passed to his prejudice. It is permissible for the party to be represented by a lawyer or by any other person who is duly authorised on his behalf or even by a Karta of the family where there is a joint family. In the present case, the non-impleadment of the petitioner in the revision and the non-affording of the opportunity of hearing to him had affected his interest. It was necessary to have impleaded him as a party or at least heard him before the impugned order was passed. In view of the above, I am of the opinion that the impugned order cannot stand and must be quashed, and the case sent back to the Deputy Director of Consolidation for being decided afresh after impleading and hearing the petitioner.

4. In the result, therefore, the writ petition is allowed. The impugned order is quashed and the case sent back to the Deputy Director of Consolidation for being decided afresh after impleading and hearing the petitioner in accordance with law. However, in the circumstances of the case. I make no order as to costs.